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STATE OF MONTANA

Kathryn S. Syth
LaRANCE & SYTH, P.C.
303 N. Broadway, Ste 600
P.O. Box 1456
Billings, MT 59103-1456
406-259-1054
Attorneys for Appellee

IN THE SUPREME COURT OF THE STATE OF MONTANA
Case No. DA10-0022

JAMES M. WALTERS and DIANE M. WALTERS

Plaintiffs/Appellees,

and

LARRY LULOFF and JANET PERKINS LULOFF,

Defendants/Appellants.

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APPELLEES MOTION TO DISMISS APPEAL

Comes now, the Appellees, James M. Walters and Diane M. Walters "Walters", by and through their attorney of record, and move this court for its order dismissing this appeal. This motion is made for the reason that Judgment has been satisfied and the appeal is no longer necessary and Appellants, Larry and

Janet Perkins Luloff "Luloffs" objection is waived.

Walters were granted two judgments against Luloffs. The first judgment this Court affirmed the underlying judgment in this matter *Walters v. Luloff*, 2008 MT 17, on January 28, 2008. The second judgment, which is subject of this appeal, was entered on December 19, 2009. The District Court on remand, again determined that the attorney fee award was proper under a "justice so requires" standard.

Luloffs did not seek a stay pending their appeal of December 19, 2009 judgment. Walters had two Writs of Execution issued upon both of the judgments owed to Walters and Luloffs offered to satisfy the judgments for less than the amount due. Walters agreed to accept Luloffs offer for less than the amount due and communicated that information by fax to the Guardian Title Company, a copy of the fax is attached hereto as Exhibit "A".

On May 7, 2010, Guardian Title Company sent a fax advising that they were in possession of the funds, but had "been instructed to not release the wire until I have copy of the signed release." A copy of the fax is attached hereto as Exhibit "B". Walters' counsel signed a Satisfaction of Judgment and faxed a copy to Guardian Title Company on May 7, 2010, a copy of the fax is attached hereto

Exhibit "C". The funds were received on May 10, 2010 into the trust account of Walters counsel.

Further, appellants brief that does not conform to the appellate rules and the relief requested in not available. The relief requested in this non-conforming brief is:

> The Luloffs respectfully request that the district court's grant of summary judgment and attorney fees and remand this matter for a new trial. Further, Luloffs request this matter be remanded because the district as the trier of fact failed to apportion fault as required by Mont. Code Ann. 27-1-705.

Again, this Court has affirmed the underlying judgment in this matter *Walters v. Luloff*, 2008 MT 17 on January 28, 2008. The remaining issue of attorneys fees was remanded and subsequently awarded again to the Walters by the District Court. Luloffs at the hearing on the amount of attorneys fees attempted to argue the underlying judgment again, and now again specifically repeat the same arguments or their previous counsel who represented them during their initial appeal.

Luloffs claims were already addressed by this court and are now barred by res judicata. The doctrine of res judicata bars the relitigation of a claim once a final judgment has been entered. *Holtman v. 4-G's Plumbing and Heating, Inc.*

(1994), 264 Mont. 432, 872 P.2d 318. Finality is accorded to the disposition of all issues that were raised or that could have been raised; a party, therefore, is prohibited from relitigating a claim that he or she has already had an opportunity to litigate. *Traders State Bank v. Mann* (1993), 258 Mont. 226, 238, 852 P.2d 604, 611. T *Federated Mut. Ins. Co. v. Anderson,* 1999 MT 288, ¶ 58, 297 Mont. 33, ¶ 58, 991 P.2d 915, ¶ 58.

Luloffs should not be allowed to repeat claims already litigated causing the Walters further expense and inconvenience in responding. Luloffs even though representing themselves must be held to follow the procedural rules. In addition, the Luloffs have satisfied the judgment and this matter should be ended. This court has found that while ***pro se*** litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect ***pro se*** litigants to adhere to procedural rules. *Greenup v. Russell,* 2000 MT 154, ¶ 15, 300 Mont. 136, ¶ 15, 3 P.3d 124, ¶ 15. This matter for the Walters began in 2003 and Luloffs have been given every latitude by the District Court and this court. However, the Luloffs continue to ignore the decision of this court and repeat the same arguments over and over.

Walters respectfully request that the Supreme Court issue its order dismissing this appeal with prejudice.

RESPECTFULLY SUBMITTED this 3rd day of June, 2010.

LaRANCE & SYTH, P.C.

BY: Kathryn S. Syth
KATHRYN S. SYTH
Attorney for Appellees

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was mailed, postage prepaid, upon the following on the 3rd day of June, 2010:

Ed Smith - Clerk of Supreme Court
215 North Sanders, Room 323
PO Box 203003
Helena, Montana 59620

LARRY LULOFF
JANET PERKINS LULOFF
Pro Se Litigants
208 Stormitt Butte Road
Roberts, MT 59070

Teri Williams
Teri Williams, Legal Assistant to
Kathryn S. Syth